27-2-202

MT LEGISLATIVE HISTORY

Chapter 263 19 75

Bill H _____ S 148 Original bill & hist. ✓ C

H. Committee on Jud. S. Committee on Jud.

Hearing Date(s)	C	Hearing Date(s)	C
~~2/4~~ 2/26	C	1/21	C
~~4/8~~ 3/11	C	1/29	C
~~4/9~~ 3/12	C	2/21	C
_____	C	_____	C
Date Out _____	C	_____	C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

INTRODUCED BY Senate BILL NO. 148
Roberts Ronny McCallum

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Terms to be construed as elective share of surviving spouse. Where in the Revised Codes of Montana the terms "dower" or "curtesy" are used, they mean, unless the context clearly requires otherwise, "elective share of surviving spouse" as defined in the Uniform Probate Code.

Section 2. Terms to be construed as a devise. Where in the Revised Codes of Montana the terms "bequest" or "devise" or a combination of such terms are used, they mean, unless the context clearly requires otherwise, a "devise" as defined in section 91A-1-201(8).

Section 3. Terms to be construed as a devisee. Where in the Revised Codes of Montana the terms "legatee", "devisee", or any term referring to persons designated in a will to receive real or personal property pursuant to a testamentary disposition, or a combination of such terms is used, they mean, unless the context clearly requires

otherwise, a "devisee" as defined in section 91A-1-201(9).

Section 4. Terms to be construed as a guardian or conservator. Where in the Revised Codes of Montana the term "guardian" is used, such term shall mean, unless the context clearly requires otherwise, either a "guardian" or a "conservator" as defined by the Uniform Probate Code, depending upon the context of the section involved.

Section 5. Terms to be construed as letters. Where in the Revised Codes of Montana the terms "letters of administration", "letters of administration with will annexed", "letters testamenatry", or a combination of such terms are used, they shall mean, unless the context clearly requires otherwise, "letters" as defined in section 91A-1-201(24).

Section 6. Section 25-233, R.C.M. 1947, is amended to read as follows:

"25-233. Fees of clerk in probate proceedings. At the time of filing ~~the petition for letters testamentary, of administration or guardianship,~~ an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or

acceptance of such appointment, the clerk shall collect from the petitioner or person accepting such appointment the sum of ten dollars ($10).

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of ten dollars ($10).

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of ten dollars ($10).

And on the entry of judgment thereon, the prevailing party must pay the sum of five dollars ($5).

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of ten dollars ($10).

On entry of judgment thereon, the prevailing party must pay the sum of five dollars ($5).

One-quarter (1/4) of all fees collected by said clerk of the district court must be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund."

Section 7. Section 25-237, R.C.M. 1947, is amended to read as follows:

"25-237. Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed

~~executors and administrators~~ personal representatives, as provided in section ~~91-3407~~ 91A-3-719."

Section 8. Section 45-603, R.C.M. 1947, is amended to read as follows:

"45-603. Priority of wages in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually owed, ~~rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children,~~ are preferred debts under section 91A-3-805(1)(e) and must be paid before other claims against the estate of the deceased person."

Section 9. Section 91-602, R.C.M. 1947, is amended to read as follows:

"91-602. Must procure letters of administration--bond and oath. Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of ~~the administrator's~~ a personal representative's bond and oath, but when real estate is

ordered to be sold, another bond ~~must~~ may be required by the court."

Section 10. Section 91-614, R.C.M. 1947, is amended to read as follows:

"91-614. When to settle with clerk of district court. The public administrator is required to account~~, under oath,~~ and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed~~, as provided in sections 91-4103 to 91-4106~~."

Section 11. Section 91-628, R.C.M. 1947, is amended to read as follows:

"91-628. Compensation of public administrator. The public administrator shall receive as full compensation for his services, including attorney's fees, ~~a commission of fifteen per cent (15%) of the total amount of money received by him in any estate provided for in this act~~ the amounts provided for in sections 91A-3-719 and 91A-3-720; provided, that in no case shall the compensation be less than twenty-five dollars ($25)."

Section 12. Section 91-629, R.C.M. 1947, is amended to read as follows:

"91-629. Retiring public administrator may close

pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court, a full and complete account pertaining to each estate not closed, securing an order of court granting him letters of ~~general~~ administration and qualifying himself as a ~~general administrator under and pursuant to sections 91-1701 and 91-1702, and executing and filing a new bond in such sum or sums as may be fixed by the court~~ personal representative."

Section 13. Section 91-631, R.C.M. 1947, is amended to read as follows:

"91-631. Adjustment of compensation. Thereupon the court shall determine and allow such predecessor in office, for his services rendered in connection with estates not closed, a compensation based upon the commission ~~now~~ prescribed and allowed by law, in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed ~~by said section~~."

Section 14. Section 91-2706, R.C.M. 1947, is amended to read as follows:

"91-2706. Judge may present claim, and action thereon. Any judge of the district court may present a claim against

the estate of a decedent for allowance to the ~~executor or administrator~~ personal representative thereof, ~~and if the executor or administrator allows the claim, he must in writing designate some judge of the district court of an adjoining county or district, who, upon the presentation of such claim to him, is vested with power to allow or reject it,~~ and ~~the judge presenting such claim,~~ in case of its rejection ~~by~~ the ~~executor or administrator, or by such judge as shall have acted upon it,~~ personal representative has the same right to petition or sue in a proper court for its recovery as other persons have when their claims against an estate are rejected."

Section 15. Section 91-2725, R.C.M. 1947, is amended to read as follows:

"91-2725. Payment of debt to stop running of interest. If there be any debt of the decedent bearing interest, whether presented or not, the ~~executor or administrator~~ personal representative may ~~by order of the court or judge,~~ pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid."

Section 16. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"91-4414. Exemptions from first $25,000. The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, shall be exempt. All property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the following conditions is present:

(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United

States;

(b) The property transferred is limited for use within this state;

(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed:

(i) The other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association

organized or existing under the laws of another state of the United States or foreign state or country;

(iii) The society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) $25,000; $5,000; $2,000 exempt, when. Property of the clear value of twenty-five thousand dollars ($25,000), transferred to the wife or to the husband of the decedent, five thousand dollars ($5,000) transferred to each minor lineal issue of the decedent, or any minor child adopted as such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of such adopted or mutually acknowledged child, and two thousand dollars ($2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409 shall be exempt. ~~Such~~

~~exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances.~~ Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years.

(3) $500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 17. Section 93-2504, R.C.M. 1947, is amended to read as follows:

"93-2504. Seizin within five years--when necessary in actions for real property--~~action for dower.~~ No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action. ~~No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten (10) years after the death of her husband.~~"

Section 18. Section 93-2604, R.C.M. 1947, is amended to read as follows:

"93-2604. Within five years. Within five years:

1. An action upon a contract, account, promise, not founded on an instrument in writing.

~~2. An action to establish a will where the will has been lost, concealed, or destroyed. The cause of action is not deemed to have accrued until the discovery, by the plaintiff, or the person under whom he claims, of the facts upon which its validity depends.~~

~~3.~~ 2. An action upon a judgment or decree rendered in a court not of record. The cause of action is deemed, in such case, to have accrued when final judgment was rendered."

Section 19. Section 93-1401-3, R.C.M. 1947, is amended

to read as follows:

"93-1401-3. Will to be in writing. A last will and testament~~,--except-a-nuncupative-will,~~ is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given."

Section 20. Sections 33-129, 84-4110, 91-103, 91-104, 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 93-1401-4, and 93-6352 through 93-6354 are repealed.

-End-

SB 193

44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
121	1/18/75	1/24/75	2/10/75			2/10/75			
122	1/18/75	1/24/75	1/24/75	1/24/75					
123	1/18/75	1/24/75	1/24/75	1/24/75					
124	1/18/75	1/24/75	1/24/75	1/24/75					
125	1/18/75	1/28/75	2/25/75		as amend 2/24/75				
130	1/20/75	1/28/75	2/5/75	2/5/75					
134	1/20/75	1/27/75	2/5/75			2/5/75			
138	1/21/75	1/29/75	2/5/75			2/5/75			
143	1/21/75	1/30/75	2/5/75			2/5/75			
148	1/21/75	1/29/75	2/21/75			2/21/75			
153	2/1/75	2/18/75	2/24/75			2/24/75			
154	1/21/75	2/24/75	2/24/75	2/24/75					
161	1/21/75	1/30/75	2/1/75			1/30/75			
162	1/28/75	2/7/75	2/10/75			2/10/75			
172	1/22/75	2/4/75	2/21/75		2/21/75				
175	1/22/75	2/3/75	2/25/75			2/24/75			
176	1/24/75	2/3/75	2/10/75		2/10/75				

Separate sheet for Senate House Bills and Resolutions

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 29, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:36 a.m., in room 442 of the Capitol Building. Senator Towe appointed Senator Warden to serve as Chairman in his absence until the arrival of Senator Greely.

Senate Bill 148 was not heard at the request of the author, Senator Roberts.

The following bills were discussed: SB 138
SB 5

SB 138 Senator Thiessen, District 27 and sponsor of the bill, stated the bill was introduced in 1971, was adopted but inadvertantly left out of the Uniform Code when adopted in 1974. This bill would replace it.

Senator Greely assumed the Chair and introduced the SB Sub-Committee report. Pat Driscoll, Committee Reasearcher, explained the details of the Sub-Committee deliberations.

Senator Towe assumed the Chair.

SENATOR GREELY MOVED TO AMEND SB5 ON PAGE 3, SECTION 5, LINE 3 BY STRIKING "occupation" AND "social security" AND ON LINE 4 BY STRIKING "number". THE MOTION PASSED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely proposed an amendment to page 6, section 10, lir 17, following "(1)" strike the word "marriages" and "all of line 18 through line 24", and inserting the following:
"The following marriages are prohibited"
(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
(b) a marriage between an ancestor and a descendent; or between a brother and a sister, whet -r the relationship is by the half or the whole blood, or by adoption;
(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood except as to marriages permitted by the established customs of aboriginal cultures.
(2) Parties to a marriage prohibited under this section who cohabit after removal of the impedidment are lawfully married as of the date of the removal of the impediment."

and renumbering subsection (2) as (3).

SENATOR BROWN MOVED TO AMEND THE AMENDMENT BY STRIKING THE WORDS IN SUBSECTION (b) "by adoption" AND INSERTING IN LIEU THEREOF "by first cousins". THE MOTION PASSED UNANIMOUSLY ON A ROLL CALL VOTE.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
FEBRUARY 12, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:35 a.m. in room 442 of the Capitol Building.

The following bills were discussed: SB 204
SB 206
SB 348
SB 148
SB 283.

SB 204 Senator Conover, District 30 and sponsor of the bill, stated the purpose of the bill is to increase the judges in the 13th Judicial District from three to four.

John Cavin, Chairman of the Yellowstone County Bar Association Committee in support of SB 204, introduced the following members of that group to the Committee: Chuck Pemble, Chief Clerk of the District Court in Billings, Larry Herman, attorney, Jerome Cate, attorney, Richard Anderson, attorney, and Bob Holmstrom, President of the Yellowstone County Bar Association. The gentlemen each spoke briefly in support of the bill quoting facts and figures from the attached testimony prepared by that Committee. Senator Towe presented letters in support of the bill to the Committee (attached).

The Committee met briefly in executive session.

SB 206 SENATOR GREELY MOVED SB 206 DO NOT PASS AND THE PRIORITIES COMMITTEE BE SENT A LETTER ASKING THEM TO STUDY SOVEREIGN IMMUNITY. THE MOTION CARRIED WITH SENATOR BROWN VOTING NO AND SENATOR TURNAGE MOMENTARILY ABSENT, ON A ROLL CALL VOTE.

The public hearing resumed.

SB 348 Senator Lynch, District 42 and sponsor of the bill, stated the purpose of the bill is to create a statute of limitations on action by the state to collect debts.

Laury Lewis, representing the Department of Revenue, stated the support of the Department for the bill. He said the Department will be able to close the books on uncollectable debts, simplify record keeping, and generally clear up an administrative problem if the bill were to pass.

The public hearing was closed and the Committee met in executive session.

SB 348 SENATOR TURNAGE MOVED TO AMEND THE BILL BY STRIKING IN THE TITLE, LINE 4, "TWENTY" AND INSERTING "TEN", AND FURTHER AMEND THE TITLE BY ADDING FOLLOWING "LIENS" THE FOLLOWING "AND AMENDING SECTION 93-2602 R.C.M. 1947". HE WOULD FURTHER AMEND THE BILL IN SECTION 1 BY STRIKING LINES 9-11 AND INSERTING SECTION 93-2602 AND RENUMBERING SUBSECTION 1 AS 3 AND SUBSECTION 2 AS 4. THE MOTION CARRIED WITH SENATOR GREELY VOTING NO. ON A ROLL CALL VOTE.

SENATOR DRAKE MOVED TO AMEND THE BILL IN THE TITLE, LINE 5, FOLLOWING "STATE" BY INSERTING "OR ITS POLITICAL SUBDIVISIONS"; AND TO FURTHER AMEND THE BODY OF THE BILL IN SECTION 1, LINES 12 AND 13 FOLLOWING "MONTANA" BY INSERTING "OR ITS POLITICAL SUBDIVISIONS". THE MOTION CARRIED WITH SENATORS WARDEN AND GREELY VOTING NO ON A ROLL CALL VOTE.

SENATOR GREELY MOVED TO AMEND THE TITLE AND THE BODY OF THE BILL TO PROVIDE AN EFFECTIVE DATE OF JULY 1, 1976. THE MOTION PASSED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR DRAKE MOVED SB 348 DO PASS AS AMENDED. THE MOTION CARRIED WITH SENATORS GREELY AND WARDEN VOTING NO ON A ROLL CALL VOTE.

The Committee will hold the bill until Pat Driscoll can do some checking with various County Treasurers.

SB 148 SENATOR ROBERTS MOVED TO PLACE THE AMENDED AND REPEALING SECTIONS IN THE TITLE. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE. Pat Driscoll, Committee Researcher, was asked to consult with Jim Zion on Sections 1-5.

SB 283 The Committee discussed various amendments to the bill but had to adjourn before taking any official action.

There being no further action, the meeting adjourned to reconvene Thursday, February 13, at 9:30 a.m.

CHAIRMAN

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
February 20, 1975

The meeting was opened by Senator Towe, Chairman, at 7:30 P.M. in Room 442 of the Capitol Building.

The following bills were discussed:

SB 181	SB 148
SB 212	SB 356
SB 249	SB 204
SB 172	SB 314

SB 181 -- A SUBSTITUTE MOTION BY SENATOR BROWN THAT SB 181 DO NOT PASS CARRIED ON A ROLL CALL VOTE WITH SENATORS TURNAGE AND BROWN VOTING NO.

SB 212 -- Senator Greely moved to amend page 1, line 13 by striking "must" and inserting "may" and inserting in page 1, line 18 following "same" the phrase "without the notice required by (section 2)". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely moved to strike "immediate" on page 1, line 20. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved to strike section 3 in its entirety and renumber subsequent sections. THE MOTION CARRIED WITH SENATOR ROBERTS AND GREELY VOTING NO.

Senator Turnage moved in section 4 to insert a period at the end of line 15 and strike line 16 and 17. THE MOTION CARRIED WITH SENATORS GREELY AND ROBERTS VOTING NO.

Senator Turnage moved to amend section 5 on lines 9 and 10 to strike ", ten dollars ($10) for each day the encroachment remained after receipt of notice". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved that section 6 be stricken in its entirety. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved SB 212 DO PASS as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 249 -- Senator Greely moved SB 249 DO NOT PASS. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR TURNAGE VOTING NO AND SENATOR WARDEN ABSENT.

SB 172 -- Senator Roberts moved SB 172 DO NOT PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 148 -- Senator Greely moved to strike the first five sections of the bill and renumber the remaining sections. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 148 -- Senator Roberts moved that SB 148 DO PASS as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 356 -- Senator Greely moved to amend line 8, page 1, following "or" by inserting "within". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Drake moved to amend line 16, line 1, following "or" by inserting "a majority of commissioners of each county of a". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Warden moved SB 356 DO PASS as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND BROWN VOTING NO.

SB 204 -- Senator Roberts moved SB 204 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE AND GREELY VOTING NO.

SB 314 -- Senator Greely moved to amend page 5, lines 14, 15 and 16. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely moved to amend page 2, line 19 by striking the brackets ([]) and inserting "and" following "employment". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Towe moved to insert a new section 14 to be a severability clause. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Brown moved SB 314 DO PASS as amended. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS TOWE AND ROBERTS VOTING.

There being no further business, the meeting adjourned to reconvene February 21, at 9:30 A.M.

Thomas E. Towe, Chairman

STANDING COMMITTEE REPORT

February 21, 19 75

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 148

Respectfully report as follows: That SENATE Bill No. 148,

introduced bill, be amended as follows:

1. Amend page 1, sections 1 through 5, lines 10 through 25, through line 14 on page 2.
   Strike: Sections 1 through 5 in their entirety
   Renumber: Subsequent sections

~~DO PASS~~ AND AS SO AMENDED, DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 53	Raising age to 19 or older for the purpose of purchasing, consuming or using alcoholic beverages.	2/25/75	Kolstad		3/5/75 transferred to another committee	3/5/75
SB 202	Providing for reppublication notice to a candidate criticized in a preelection advertisement & medium carrying the advertisement & providing penalties.	2/25/75	Towe	3/5/75	AS SO AMENDED BE CONCURRED IN	3/14/75
SB 218	To submit to qualified electors of Mt. an amendment to Art. V, Section 2 of Mt. Const. to reduce size of senate to 25 and House to 50 members.	2/25/75	Roberts	3/8/75	BE NOT CONCURRED IN	3/10/75
SB 283	To revise the provisions of Mt. sexual crimes statutes pertaining to sexual intercourse without consent.	2/26/75 3/17/75	Seibel	3/6/75	BE CONCURRED IN BE CONCURRED IN	3/6/75 3/17/75
SB 76	An act revising political campaign reporting requirements, etc.	2/26/75	Greely	3/5/75	BE CONCURRED IN AS SO AMENDED BE CONCURRED IN	3/14/75 3/12/75
SB 148	To generally revise and repeal statutes on wills, succession, probate, and guardianship to conform Mt. law to uniform probate code.	2/26/75	Roberts	3/11/75	BE CONCURRED IN	3/12/75

JUDICIARY COMMITTEE

March 11, 1975

The fifty first meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Tuesday, March 11, 1975 at 9:00 AM. Representative Herb Huennekens, chairman, presided. All members were present.

Bills scheduled for hearing this date were Senate Bills Nos. 148, 138, 27 and 223 and they were heard in this order.

SENATE BILL NO. 148 Senator Joe Roberts, District #11, is chief sponsor of the act to generally revise and repeal statutes on wills, succession, probate, and guardianship to conform Montana law to the Uniform Probate Code. He explained that this is the last piece of legislation implementing the Uniform Probate Code. After the '73 session the interim committee of the House and Senate Judiciary committees met and studied and ultimately came out with recommendations for the Uniform Probate Code. The onerous feature of recodification is to do the repealers. Last year they were behind time in getting the repealers ready. By a special arrangement they hired James Zion to recommend the statutes that needed repealing. A copy of these recommendations is included (see attached statement). Section 20 is the most important section. If this bill is enacted the Uniform Probate Code can go into effect without hitch in July of 1975. This bill will be an excellent addition to the Montana law.

No proponents. No opponents. No closing.

Chairman Huennekens questioned if the stricken sections were taken care of elsewhere to which Senator Roberts replied yes. Representative Meloy questioned if Senator Roberts would concur with the deletion of sections 1 through 5 and was advised yes. They were afraid of having general statutes here.

Hearing was then closed on Senate Bill No. 148.

SENATE BILL NO. 138 Senator Cornie Thiessen, District #27, is chief sponsor of this act to provide that a personal representative and his attorney may not receive a fee or other compensation for an estate not closed within two years unless good cause is shown to exist. He stated this is a rerun, that in '71 when this statute was adopted and when the Uniform Probate Code was adopted last year this was inadvertently left out. This bill does one simple thing - the judge orders the personal representative to show cause, if cause doesn't exist then that's that. The Supreme Court feels this is good legislation.

No proponents. No opponents. No closing.

and wives in order to eliminate sexual discrimination in such laws.

Representative Halvorson moved BE CONCURRED IN. Following very brief discussion the motion carried unanimously.

SENATE BILL NO. 148 Senator Roberts is chief sponsor of this act to generally revise and repeal statutes on wills, succession, probate, and guardianship to conform Montana law to the Uniform Probate Code.

Representative Lory moved BE CONCURRED IN. Representative Seifert seconded the motion. Diana Dowling explained that at the end of the last legislative session attorney Jim Zion was hired to go through all of the codes on the books and check out repealers and amenders.

Motion BE CONCURRED IN carried unanimously.

SENATE BILL NO. 339 Senator Joe Roberts is chief sponsor of this act to require a judicial designation of certain felony offenders as persistent felony offenders for purposes of parole eligibility.

Representative Seifert stated that on page 2, lines 18, 19, and 20 Nick Rotering had suggested giving five days. Representative Lory moved to amend on page 2, line 18 by striking the "3" and inserting "5". Motion to amend carried unanimously.

Representative Baeth moved AS SO AMENDED BE CONCURRED IN. Motion carried unanimously.

Representative Scully moved to adjourn at 9:10 PM. Motion carried. (Representative Scully had just arrived).

Herb Huennekens

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb

STANDING COMMITTEE REPORT

March 12, 19 75

BE CONCURRED IN

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 148

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

Respectfully report as follows: That SENATE Bill No. 148

BE CONCURRED IN

[redacted]

MR:rpb

STATE PUB. CO.
Helena, Mont.

[redacted], Chairman.

SENATE BILL NO. 148

INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Terms to be construed as elective share of surviving spouse. Where in the Revised Codes of Montana the terms "dower" or "curtesy" are used, they mean, unless the context clearly requires otherwise, "elective share of surviving spouse" as defined in the Uniform Probate Code.~~

~~Section 2. Terms to be construed as a devise. Where in the Revised Codes of Montana the terms "bequest" or "devise" or a combination of such terms are used, they mean, unless the context clearly requires otherwise, a "devise" as defined in section 91A-1-201(8).~~

~~Section 3. Terms to be construed as a devisee. Where in the Revised Codes of Montana the terms "legatee", "devisee", or any term referring to persons designated in a will to receive real or personal property pursuant to a testamentary disposition, or a combination of such terms is used, they mean, unless the context clearly requires~~

REFERENCE BILL

~~otherwise, a "devisee" as defined in section 91A-1-201(9).~~

~~Section 4. Terms to be construed as a guardian or conservator. Where in the Revised Codes of Montana the term "guardian" is used, such term shall mean, unless the context clearly requires otherwise, either a "guardian" or a "conservator" as defined by the Uniform Probate Code, depending upon the context of the section involved.~~

~~Section 5. Terms to be construed as letters. Where in the Revised Codes of Montana the terms "letters of administration", "letters of administration with will annexed", "letters testamentary", or a combination of such terms are used, they shall mean, unless the context clearly requires otherwise, "letters" as defined in section 91A-1-201(24).~~

Section 1. Section 25-233, R.C.M. 1947, is amended to read as follows:

"25-233. Fees of clerk in probate proceedings. At the time of filing ~~the petition for letters testamentary, of administration or guardianship,~~ an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or

acceptance of such appointment, the clerk shall collect from the petitioner or person accepting such appointment the sum of ten dollars ($10).

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of ten dollars ($10).

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of ten dollars ($10).

And on the entry of judgment thereon, the prevailing party must pay the sum of five dollars ($5).

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of ten dollars ($10).

On entry of judgment thereon, the prevailing party must pay the sum of five dollars ($5).

One-quarter (1/4) of all fees collected by said clerk of the district court must be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund."

Section 2. Section 25-237, R.C.M. 1947, is amended to read as follows:

"25-237. Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed

~~executors--and--administrators~~ personal representatives, as provided in section ~~91-3407~~ 91A-3-719."

Section 3. Section 45-603, R.C.M. 1947, is amended to read as follows:

"45-603. Priority of wages in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually owed, ~~rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children,~~ are preferred debts under section 91A-3-805(1)(e) and must be paid before other claims against the estate of the deceased person."

Section 4. Section 91-602, R.C.M. 1947, is amended to read as follows:

"91-602. Must procure letters of administration--bond and oath. Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of ~~the administrator's~~ a personal representative's bond and oath, but when real estate is

ordered to be sold, another bond ~~must~~ may be required by the court."

Section 5. Section 91-614, R.C.M. 1947, is amended to read as follows:

"91-614. When to settle with clerk of district court. The public administrator is required to account~~,-under-oath,~~ and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed~~,-as-provided-in-sections-91-4103-to-91-4106~~."

Section 6. Section 91-628, R.C.M. 1947, is amended to read as follows:

"91-628. Compensation of public administrator. The public administrator shall receive as full compensation for his services, including attorney's fees, ~~a--commission--of fifteen-per-cent-(15%)-of-the-total-amount-of-money-received by--him--in--any-estate-provided-for-in-this-act~~ the amounts provided for in sections 91A-3-719 and 91A-3-720; provided, that in no case shall the compensation be less than twenty-five dollars ($25)."

Section 7. Section 91-629, R.C.M. 1947, is amended to read as follows:

"91-629. Retiring public administrator may close

pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court, a full and complete account pertaining to each estate not closed, securing an order of court granting him letters of ~~general~~ administration and qualifying himself as a ~~general--administrator--under--and pursuant--to-sections-91-1701-and-91-1702,-and-executing-and filing-a-new-bond-in-such-sum-or-sums-as-may-be-fixed-by-the court~~ personal representative."

Section 8. Section 91-631, R.C.M. 1947, is amended to read as follows:

"91-631. Adjustment of compensation. Thereupon the court shall determine and allow such predecessor in office, for his services rendered in connection with estates not closed, a compensation based upon the commission ~~now~~ prescribed and allowed by law, in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed ~~by-said-section~~."

Section 9. Section 91-2706, R.C.M. 1947, is amended to read as follows:

"91-2706. Judge may present claim, and action thereon. Any judge of the district court may present a claim against

the ~~estate~~ of a decedent for allowance to the ~~executor or administrator~~ personal representative thereof, ~~and--if--the executor--or--administrator--allows--the--claim,--he--must--in writing--designate--some--judge--of--the--district--court--of--an adjoining--county--or--district,--who,--upon--the--presentation--of such--claim--to--him,--is--vested--with--power--to--allow--or--reject it,~~ and ~~the--judge--presenting--such--claim,~~ in case of its rejection ~~by~~ the ~~executor--or--administrator,--or--by--such--judge as--shall--have--acted--upon--it,~~ personal representative has the same right to petition or sue in a proper court for its recovery as other persons have when their claims against an estate are rejected."

Section 10. Section 91-2725, R.C.M. 1947, is amended to read as follows:

"91-2725. Payment of debt to stop running of interest. If there be any debt of the decedent bearing interest, whether presented or not, the ~~executor--or--administrator~~ personal representative may~~,--by--order--of--the--court--or--judge,~~ pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid."

Section 11. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"91-4414. Exemptions from first $25,000. The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, shall be exempt. All property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the following conditions is present:

(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United

States;

(b) The property transferred is limited for use within this state;

(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed:

(i) The other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association

organized or existing under the laws of another state of the United States or foreign state or country;

(iii) The society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) $25,000; $5,000; $2,000 exempt, when. Property of the clear value of twenty-five thousand dollars ($25,000), transferred to the wife or to the husband of the decedent, five thousand dollars ($5,000) transferred to each minor lineal issue of the decedent, or any minor child adopted as such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of such adopted or mutually acknowledged child, and two thousand dollars ($2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409 shall be exempt. ~~Such~~

~~exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances.~~ Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years.

(3) $500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 12. Section 93-2504, R.C.M. 1947, is amended to read as follows:

"93-2504. Seizin within five years--when necessary in actions for real property--~~action for dower~~. No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action. ~~No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten (10) years after the death of her husband.~~"

Section 13. Section 93-2604, R.C.M. 1947, is amended to read as follows:

"93-2604. Within five years. Within five years:

1. An action upon a contract, account, promise, not founded on an instrument in writing.

~~2. An action to establish a will where the will has been lost, concealed, or destroyed. The cause of action is not deemed to have accrued until the discovery, by the plaintiff, or the person under whom he claims, of the facts upon which its validity depends.~~

~~3.~~ 2. An action upon a judgment or decree rendered in a court not of record. The cause of action is deemed, in such case, to have accrued when final judgment was rendered."

Section 14. Section 93-1401-3, R.C.M. 1947, is amended

to read as follows:

"93-1401-3. Will to be in writing. A last will and testament~~,--except-a-nuncupative-will,~~ is invalid~~,~~ unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given."

Section 15. Sections 33-129, 84-4110, 91-103, 91-104, 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 93-1401-4, and 93-6352 through 93-6354 are repealed.

-End-